

Ombudsman's Determination

Applicant	Miss D
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	London Borough of Sutton (the Council)

Outcome

1. I partly uphold Miss D's complaint; my Directions are set out in paragraph 47 below.

Complaint summary

2. Miss D has complained that she was told on multiple occasions that the earliest date she could take retirement, without her benefits being reduced, was her 60th birthday, in March 2020. It was not until March 2020 that she was informed that the correct date was 15 September 2024.
3. She says that she made the decision to take early retirement from another scheme as a result of the incorrect information. She maintains she would not have taken early retirement at that time had she not been misinformed. She wants her unreduced benefits from the Scheme paid to her, backdated to March 2020.

Background information, including submissions from the parties and timeline of events

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Between 17 April 1979 and 17 February 1991, Miss D was employed by Islington London Borough Council (**Islington Council**).
6. Between 18 February 1991 and 17 September 2001, Miss D was employed by Hackney London Borough Council (**Hackney Council**).
7. On 15 September 2003, Miss D began her employment with the Council and joined the Scheme on 1 October 2003. Her benefits in the Scheme were administered by the Administrator.

8. On 29 March 2006, Miss D left the employment of the Council and became entitled to preserved benefits in the Scheme.
9. On 5 April 2006, the Administrator wrote to Miss D to notify her of the deferred benefits she had earned in the Scheme. It quoted an annual deferred pension of £1,033.09 and a deferred lump sum of £3,099.27. It said that: "These benefits will be payable from [] March 2020 (age 60)."
10. Miss D was then employed by the Southern Housing Group (**Southern Housing**). This employment was not connected to the Scheme.
11. From at least 2016, the Administrator sent Miss D annual deferred benefit statements. The statements advised that she was entitled to receive her benefits, without reduction for early payment, from her 60th birthday. The statements also included a disclaimer. As an example, the statement issued on 15 August 2019 (**the 2019 Statement**) included the following:

"This letter has been prepared based on the understanding of the current legislation governing the Local Government Pension Scheme and associated overriding legislation. We make every attempt to ensure the accuracy and reliability of the information in our letters, however, this information is intended for general use and cannot cover every personal circumstance. It should not be treated as a complete and authoritative statement of the law.

In the event of any dispute over the pension benefits, the appropriate legislation will prevail as this letter does not confer any contractual or statutory rights and is provided for information purposes only."
12. In 2017, Miss D was made redundant from her employment with Southern Housing.
13. In March 2020, Miss D reached age 60. She telephoned the Administrator to raise some questions in relation to the benefits she considered were due to be paid to her from the Scheme. She said that during this telephone conversation, she was informed that her pension was not payable without a reduction for early payment until 15 September 2024.
14. On 19 March 2020, the Administrator emailed Miss D to apologise that its earlier communications had incorrectly referred to her normal retirement age as being 60 rather than 65. It said:-
 - The figures quoted in the 2019 Statement would be payable from age 65 and not age 60, as previously stated. These were an annual pension of £1,432.98 and a lump sum of £4,299.00.
 - The estimated benefits payable to Miss D at age 60 were an annual pension of £1,138.30 and a lump sum of £3,856.33. These figures included an actuarial reduction for early payment.
15. On 24 March 2020, Miss D responded to the Administrator. In summary, she said:-

- In 2017, she had been made redundant from her employment with Southern Housing. She had looked at her income from then to 2020, and from 2020 onwards. In relation to the period from 2017 to 2020, she had decided that her redundancy pay and savings were enough for her to survive on until 2020, knowing the level of benefits she would get from the Scheme in respect of her employments with Hackney Council and the Council. This had also informed her decision on whether to buy a new or smaller home, rent a home, make travel arrangements, pay bills and buy a car.
 - If she was not paid what had been promised, she was at least £7,164.90 short in her income over those years. This would affect her plans going forward. Furthermore, in 2017, she would have made different decisions.
 - She did not see why she should have to consider taking reduced benefits at age 60, as this would affect her pension amount for the rest of her life.
 - She had been left financially adrift in relation to her retirement planning and in financial difficulty with regard to her financial commitments.
16. On 18 May 2020, Miss D raised a complaint for consideration under the Scheme's two stage internal dispute resolution procedure (**IDRP**). She referred to the points made in her email of 24 March 2020 and said that the Administrator's letter of 5 April 2006 stated that her benefits were payable from March 2020, without reduction for early payment. Since then, the annual benefit statements she had received repeated this message.
17. On 20 July 2020, the Administrator provided its response under stage one of the IDR. In summary, it said:-
- The error had been caused by how Miss D's unaggregated service had been recorded. Her service with Islington and Hackney Councils had been incorrectly recorded as qualifying service. This meant that, although not counting towards the calculation of her benefits in the Scheme, they were used when determining the reduction that would apply to her benefits if taken before her normal pension age of 65. She was incorrectly informed that she would satisfy the '85 Year' rule at age 60 and her benefits would be payable without reduction from that age.
 - The '85 Year' rule refers to the date on which the member's age in complete years when added to their completed calendar years of service, including years in deferment, equals 85. If this is the case the member can take their benefits early without a reduction.
 - In the case of Miss D, on 14 September 2024 she will have completed 21 years of service, including a period of deferment, from when she joined the Scheme with the Council on 15 September 2003. Adding this to her age on 14 September 2024 of 64 gives a total of 85.
 - A disclaimer had been included on the 2019 Statement.

- The provision of incorrect information did not create an entitlement to be treated as though the information was correct. So, Miss D's benefits would be subject to actuarial reduction should she decide to receive them before September 2024.
 - It apologised for the error and offered Miss D a payment of £500 in respect of any distress and inconvenience she had suffered.
18. On 4 August 2020, Miss D asked for her complaint to be considered under stage two of the IDRPs.
19. On 15 August 2020, the Council provided its response under stage two of the IDRPs. It said that it had not upheld Miss D's complaint as the date she could retire without her benefits being reduced was determined by the regulations that governed the Scheme **(the Regulations)**.
20. Miss D made the following additional submissions:-
- The Administrator was the expert and should have provided the correct information in the first instance or at least have checked the position in the intervening 14 years.
 - She had not contacted the Administrator to discuss her benefits prior to March 2020 as she had not needed to do this.
 - The Administrator should not just quote the Regulations. It should be looking to resolve the problem.
 - She did not receive the benefits promised to her and has been living on a lower income than she expected for over three years. It was harder for her to pay bills and she was looking for cheaper accommodation. Her savings were approximately £5,000 lower as a result, and she was facing ongoing financial hardship. This has caused her anxiety, and she has missed opportunities to do things as she was concerned about being able to afford them.
 - Having decided she could survive on her savings until 2020, she was expecting her savings to be replenished when her benefits were put into payment. This would have allowed her to use her savings for holidays, emergencies and enjoying life in retirement. By not taking her Council pension from the Scheme in 2020, her savings were not replenished. Furthermore, her living costs were not covered by the pension she was receiving as a result of her employment with Hackney Council.
 - Had she known the correct position, she would not have retired after her redundancy in 2017. Instead, she would have continued working to build up her savings so she would have had more money to rely on if she decided to retire in 2020. She would have sought better paid work to support her desire to retire at 60. After her redundancy in 2017, she was offered numerous highly paid jobs as her skillset was in demand. She had turned these down. She would also have

been able to correctly assess where she wanted to live and the life she wanted after 2020.

- In 2018 and 2020 she went on two holidays which cost her several thousand pounds. She was happy to do this as she believed her savings would be replaced when she reached age 60. She would not have gone on these holidays had she known the true position.

21. The Administrator made the following additional submissions:-

- Miss D did not contact it in 2017, when she made her decision to retire following her redundancy from her employment with Southern Housing. In fact, Miss D had not contacted it to discuss her benefits until March 2020.
- Miss D had the option of taking her benefits from the Scheme on her 60th birthday with an actuarial reduction applied.

22. As of 23 November 2023, Miss D's benefits in the Scheme, accrued through her employment with the Council, remain deferred. She has not accepted the Administrator's offer of a £500 payment in recognition of the distress and inconvenience she has suffered.

Adjudicator's Opinion

23. Miss D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised in paragraphs 24 to 35 below.

24. The Council agreed that Miss D was incorrectly notified on a number of occasions that her benefits from the Scheme would be paid to her from her 60th birthday, without reduction for early payment. These notifications were a letter shortly after she left its employment, quoting her deferred benefits, and annual deferred benefit statements. So, there was no dispute that an error had been made.

25. Miss D said that she made a number of financial decisions which were based on the incorrect information she had been provided with. These included her decision not to seek further employment when she was made redundant in 2017, together with decisions relating to her home, car and holiday arrangements. She maintained that she would have made different decisions had she been aware that she could not take her benefits before September 2024 without reduction for early payment.

26. A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a 'representation'. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.

27. The Adjudicator accepted that the deferred statements provided Miss D with incorrect information concerning her benefit entitlement at retirement. However, in the Adjudicator's view, the statements did not constitute a representation, because the information in them was not guaranteed. However, the Administrator's letter of 5 April 2006 stated that the benefits quoted were payable from age 60, and this statement was not caveated in any way.
28. Even if Miss D was aware that the '85 Year' rule was relevant to her benefits, any assessment by her of the operation of the '85 Year' rule would likely have been complicated by the fact that she had three periods of employment that were eligible for membership of the Scheme. The Adjudicator's view was that she could not have been reasonably expected to have been aware that the '85 Year' rule had been applied incorrectly and that she was not entitled to the payment of her unreduced benefits from age 60. In other words, the Adjudicator's opinion was that Miss D acted in good faith.
29. So, in the Adjudicator's view, it was reasonable for Miss D to have relied on the information she had been sent on 5 April 2006. However, there was a gap of 11 years between when she received this information and when she was making financial decisions around the time of her redundancy in 2017. The Adjudicator's opinion was that Miss D should have contacted the Administrator at this time to obtain up to date information which was not caveated in the way that the annual statements she received were. Had she done this, then it was possible that the error may have been identified earlier.
30. Miss D contended that she would have sought further employment had the error been brought to her attention when making financial decisions in 2017. When Miss D became aware of the error in March 2020, she had a responsibility to take reasonable steps to mitigate any loss by attempting to return herself, as near as possible, to the position she would have been in.
31. However, the Adjudicator saw no evidence that Miss D attempted to seek any form of employment in 2020 that would have helped make up any shortfall in her income and savings. The Adjudicator appreciated that it may have been difficult for Miss D to return to work three years after she had retired. However, he said the Pensions Ombudsman would expect Miss D to have taken reasonable steps to at least try mitigating the position.
32. Miss D had not yet taken her benefits from the Scheme accrued during her employment with the Council. She said that she did not see why she should have to consider taking reduced benefits at age 60 as this would affect her pension amount for the rest of her life. However, in the Adjudicator's view, taking her benefits at age 60 would have helped mitigate the financial difficulties she says she was having.
33. Miss D completed just under two years and seven months of employment with the Council, which is a relatively small proportion of her possible working lifetime. The Adjudicator said he would expect her benefits from other employments to make up

the majority of her income in retirement. Had Miss D chosen to take her benefits at age 60, her pension would have been reduced by under £25 per month and the lump sum by under £450. The Adjudicator took the view that, on the balance of probabilities, these reductions were not enough to have changed the decisions Miss D made in 2017, had she known at that time about the reduction that would be applied to her pension at age 60.

34. The Adjudicator accepted that Miss D was disappointed that the higher figures were not in fact payable. However, the Council was not bound to follow the incorrect information and Miss D was only entitled to receive the benefits provided for under the Regulations. In the Adjudicator's view, Miss D had suffered a loss of expectation and not an actual financial loss, as she will be receiving her correct benefit entitlement from the Scheme.
35. The Council accepted that Miss D was provided with incorrect information in relation to when her benefits could be paid without actuarial reduction. Providing incorrect information to Miss D amounted to maladministration and it was clear that she had sustained non-financial injustice. The Adjudicator noted that the Administrator had offered Miss D £500 for non-financial injustice. His view was that the Pensions Ombudsman would not direct the payment to her of a greater sum.
36. Miss D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss D has provided further comments in response to the Opinion, which are summarised below:-
 - It was reasonable for her to have relied on the information provided concerning her benefits in the Scheme, regardless of whether there was a gap between when it was provided and when she used it for her financial planning. This included the Administrator's letter of April 2006.
 - She had no reason to contact the Council to discuss her pension as she had received clear and continuous assurances that her pension would be paid from age 60 without reduction. She should have been able to rely on the professionalism of the Administrator to check the information it was sending her.
 - The suggestion that, had she contacted the Council in 2017, it may have found the error, was highly speculative and effectively absolved it from any legal responsibility for the maladministration that had taken place.
 - She had first discovered that her pension was not payable from age 60 without reduction in March 2020. The Adjudicator had suggested that she had a responsibility to take reasonable steps to mitigate any loss, including seeking employment opportunities. While she considered this to be a reasonable view to take, it was at odds with her circumstances at the time. The country was put on lockdown due to COVID-19 and unemployment rose significantly. With her skills being three years out of date, she does not believe she could have found appropriate employment. Furthermore, since 2017, her health had declined and,

since January 2018, she had been in receipt of Personal Independence Payments.

- She did not take the reduced benefits from the Scheme at age 60 because she wanted to challenge the Council's position. Had she been aware of the time it would take for her complaint to be considered; she may have accepted her pension at age 60 to alleviate her financial position.
- Her pension from the Scheme was important to her financial planning. After her employment with Hackney Council, she was self-employed and only paid into her State pension which was not payable until 2026. After her employment with the Council, she chose not to enrol in either of the Housing Association's or Southern Housing's pension offerings. So, there was a substantial period of her working life not covered by pension provision.
- She disagreed with the Adjudicator's view that, had she known in 2017 that her Scheme pension was not payable from age 60 without reduction, her plans would not have changed. She would have adjusted them to incorporate a different retirement age.
- Since March 2020, she had lost out on approximately £4,500 in pension payments. For someone living on a pension of £1,300 per month with monthly financial outgoings of £900, excluding food, the loss was substantial. This had caused stress and also a loss in savings to supplement her missing income.
- She had incurred the expense of her holiday in the belief that the lump sum she thought was due from the Scheme at age 60 would cover the cost.
- The Administrator's offer of a £500 payment for the non-financial injustice she had suffered was minimal and disproportionate. This should be increased to at least £2,000, in line with awards granted for cases involving serious faults.

37. I have considered the additional points raised by Miss D and agree with the Adjudicator's Opinion except the level of non-financial award.

Ombudsman's decision

38. Miss D's complaint concerns the date from which her benefits in the Scheme were payable without a reduction being applied for their early payment. When she left the Council's employment in March 2006, she was informed that this date was when she attained age 60, in March 2020. This message was subsequently repeated in a number of deferred benefit statements that Miss D was sent. It was not until March 2020, when Miss D reached age 60, that she was informed that the correct date was 15 September 2024.

39. While there is no dispute that there has been maladministration on the part of the Council, the starting point is that Miss D is only entitled to the benefits provided by the Regulations. Exceptionally, in cases where incorrect information has been given,

redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so. Furthermore, the member must demonstrate that they had taken all reasonable steps to mitigate any loss by returning themselves, as near as possible, to the position they would have been in.

40. For the reasons stated by the Adjudicator, I agree that it was reasonable for Miss D to have relied on the information that was provided to her. In relation to the options available to Miss D to try to mitigate her position, I have noted her comments on the possibility of seeking new employment given the impact of COVID-19 at the time. I have also noted the decline in her health. For these reasons, I find that, on the balance of probabilities, it would not have been possible for Miss D to mitigate her position by returning to paid employment.
41. Miss D has brought to my attention the financial difficulties she has encountered as a result of her not taking her benefits at age 60. She has also highlighted the stress this has caused her and the adverse impact on her savings.
42. One possible mitigation for this would have been for her to have taken her benefits at age 60. While these benefits would have been subject to a reduction for their early payment, this would have provided her with additional income to help alleviate her financial position. In addition, the lump sum would have helped pay for her holiday that she had budgeted to fund through her retirement lump sum.
43. Miss D has said that she did not consider taking her benefits at age 60 as she wanted to challenge the Council on the application of the reduction to her benefits, if paid at that time. I find it was not necessary for Miss D to defer taking her benefits until her complaint had been resolved. Had she taken her benefits at age 60 and I had later determined that the reduction for early payment should not be applied, I would have instructed the Council to increase her benefits to the unreduced level. It would also have had to pay any lump sum and pension arrears dating back to her 60th birthday to bring her benefits up to the unreduced level from that date.
44. Although I sympathise with Miss D's circumstances, I do not find that Miss D has suffered a financial loss. She is in receipt of the benefits from the Scheme to which she is entitled and had an option available to her which would have mitigated any financial difficulties she is now suffering. However, it is evident to me that she has experienced distress and inconvenience because of the maladministration identified.
45. When deciding whether to direct an award for distress and inconvenience, I assess each case on its facts and merits. My awards for non-financial injustice are modest and not intended to punish a respondent.
46. I note that the Administrator has offered Miss D £500 for the significant distress and inconvenience that she has suffered. Given the repeated errors in the

CAS-58806-H1J6

communication, which was not corrected until Miss D reached the age of 60, I find the distress and inconvenience caused to Miss D, to be serious, so increase the award for non-financial injustice to £1,000.

Directions

47. Within 28 days of the date of this Determination the Council shall pay Miss D £1,000 in respect of the serious distress and inconvenience which she has suffered.

Anthony Arter CBE

Deputy Pensions Ombudsman
20 February 2024